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Nos. 655 and 656

In the Supreme Court of the United States

OCTOBER TERM, 1943

RADCLIFF GRAVEL COMPANY, INC., AND AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, PETITIONERS

v.

JOSEPH H. HENDERSON, DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT, SAM ROCKER, ET AL., RESPONDENTS

RADCLIFF GRAVEL COMPANY, INC., AND AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, PETITIONERS

v.

JOSEPH H. HENDERSON, DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT, ET AL., RESPONDENTS

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT HENDERSON IN OPPOSITION

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	3
Argument	6
Conclusion	13

CITATIONS

Cases:

Blaske v. *Bassett*, 35 F. Supp. 315 — 9

Bowen v. *Shamrock Towing Co.* (C. C. A. 2), No. 131, October Term 1943 (decided December 29, 1943) — 9

Crowell v. *Benson*, 285 U. S. 22 — 8

Davis v. *Department of Labor*, 317 U. S. 249 — 7, 8, 11, 12, 13

Gray v. *Powell*, 314 U. S. 402 — 10

Gulf Oil Corp. v. *McMarigal*, 49 F. Supp. 75 — 9

Henderson v. *Jones*, 110 F. (2d) 952 — 6, 9

London Co. v. *Industrial Comm'n*, 279 U. S. 109 — 6

Motor Boat Sales v. *Parker*, 116 F. (2d) 789 — 11

Parker v. *Motor Boat Sales, Inc.*, 314 U. S. 244 — 6, 7, 8, 10

Puget Sound Freight Lines v. *Marshall*, 125 F. (2d) 876 — 9

Rochester Tel. Corp. v. *United States*, 307 U. S. 125 — 10

Shields v. *Utah Idaho R. Co.*, 305 U. S. 177 — 10

Smith & Son v. *Taylor*, 276 U. S. 179 — 8

South Chicago Coal & Dock Co. v. *Bassett*, 309 U. S. 251 — 6, 9, 10

Southern Pacific Co. v. *Jensen*, 244 U. S. 205 — 6

Sultan Ry. & Timber Co. v. *Department of Labor*, 277 U. S. 135 — 6

Sunshine Coal Co. v. *Adkins*, 310 U. S. 381 — 10

Statute:

Longshoremen's and Harbor Workers' Compensation Act, c. 509, 44 Stat. 1424 (33 U. S. C. 901, *et seq.*):

Sec. 3 — 2, 6

Sec. 32 — 13

Sec. 38 — 13

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OPINIONS BELOW

The single memorandum opinion rendered for both cases by the District Court of the United

States for the Southern District of Alabama (No. 655, R. 106–107; No. 656, R. 105–106) is not reported. The single opinion of the Circuit Court of Appeals for the Fifth Circuit in both cases (No. 655, R. 114–115; No. 656, R. 112–113) is reported in 138 F. (2d) 549.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 3, 1943 (No. 655, R. 116; No. 656, R. 114). The petitions for writs of certiorari were filed January 31, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, in an action under Section 21 (b) of the Longshoremen's and Harbor Workers' Compensation Act to enjoin and set aside an award of compensation, a finding of the Deputy Commissioner that the decedents were engaged in employment subject to the Act at the time of their death is conclusive if reasonably inferable from undisputed basic facts.

STATUTE INVOLVED

Section 3 (a) of the Longshoremen's and Harbor Workers' Compensation Act, c. 509, 44 Stat. 1424 (33 U. S. C. 903 (a)) provides:

> SEC. 3. *Coverage.*—(a) Compensation shall be payable under this Act in respect of

> disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. * * *

STATEMENT

The facts in both cases are identical. They have been stipulated as follows (No. 655, R. 36–39; No. 656, R. 35–37):

For some time prior to December 23, 1941, the date of each decedent's death, petitioner Radcliff Gravel Co., Inc., had been engaged in dredging sand and gravel from the bed of the Three Rivers Lake, a navigable body of water in the state of Alabama. These dredging operations were conducted by means of a suction-type dredgeboat which was owned by Radcliff, but was not self-propelled. Empty barges were moved into position alongside the dredge by a gasoline motor launch also belonging to Radcliff; the sand and gravel were loaded on the barges through the suction pipes of the dredgeboat; the barges were moved up and down alongside the dredgeboat by the motor launch until they were evenly loaded and then they were towed to Radcliff's place of business, where they were unloaded for sale in Radcliff's sand and gravel business. This dredging was carried on solely for the purpose of ob-

taining sand and gravel for Radcliff's business, which was entirely intrastate, and not in any way to deepen, widen, or improve the channel. Radcliff, however, was insured against liability for compensation under the Longshoremen's and Harbor Workers' Compensation Act (the "Longshoremen's Act") by petitioner, American Mutual Liability Insurance Co.

Decedents were employed as laborers, whose job was confined to trimming the sand and gravel on the barges at the place of operations of the dredgeboat to keep it from forming a pyramid or a cone. They did not in any way assist in the navigation of any boats, nor did they make any trips up and down the river.

Since there was no other place conveniently near the site of the dredging operations where the workmen could get their meals or a place to sleep between shifts of duty, Radcliff maintained a quarter boat on which meals were prepared and served to the workmen engaged in the operations at that site, and on which sleeping accommodations were furnished them. As part of the contract of employment Radcliff also provided a small boat with an outboard motor attached, for transporting the workmen between the dredge boat, the quarter boat, and the shore.

On the morning of December 23, 1941, decedents, having finished their shift of work, proceeded, together with other workmen, from the dredge boat to the shore by means of the small boat

provided by Radcliff for such purposes. They were on their way to Mobile, Alabama, to be paid off by Radcliff, and then to go home for Christmas; they were supposed to report back for work on December 26. However, before reaching the landing, about a mile from the dredge boat, the boat capsized or swamped as a result of overloading; decedents were thrown into the water and were drowned.

Decedents' dependents each filed a claim with the Deputy Commissioner for compensation under the Longshoremen's Act. Petitioners contended before the Deputy Commissioner that recovery for decedents' deaths through workmen's compensation could validly be provided by state law as provided in the exclusionary provision of Section 3 (a) of the Longshoremen's Act, and therefore that the instant claims for compensation were excluded from the coverage of that Act (No. 655, R. 40–41; No. 656, R. 39–40). The Deputy Commissioner, on the basis of the foregoing stipulated facts, rejected this contention and awarded compensation to each claimant (No. 655, R. 18–19; No. 656, R. 17–18).

Thereafter, pursuant to Section 21 (b) of the Longshoremen's Act (33 U. S. C. § 921 (b)), petitioners filed suits in the district court to enjoin the enforcement of the award (No. 655, R. 1–12; No. 656, R. 1–12). The district court found that the awards of the Deputy Commissioner were supported by substantial and competent evidence, and dismissed the complaints (No. 655, R. 106–

107; No. 656, R. 105–106). On appeal, the court below, in a very brief opinion relying on *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244; *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251; *Henderson* v. *Jones*, 110 F. (2d) 952, affirmed the judgments of the district court (No. 655, R. 114–116; No. 656, R. 112–114).

ARGUMENT

Section 3 (a) includes within the coverage of the Longshoremen's Act disability or death resulting from any injury occurring upon the navigable waters of the United States, if recovery therefor "through workmen's compensation proceedings may not validly be provided by State law." Under the doctrine of *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, which supplies the basis for the construction of this provision (*Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244), recovery for an injury occurring upon navigable water may be provided by State law only if the employment is of "merely local concern," enforcement of which by the State "would not tend to destroy the characteristic features of maritime law." *London Co.* v. *Industrial Comm'n*, 279 U. S. 109, 120. Cf. *Sultan Ry. & Timber Co.* v. *Department of Labor*, 277 U. S. 135, 137.

In the present case, the Deputy Commissioner awarded compensation to decedents' dependents despite petitioners' contention that decedents at the time of their deaths were not engaged in

"maritime" employment. The district court sustained these awards on the ground that they were supported by substantial evidence, and hence were binding, and this decision was affirmed by the court below. Petitioners admit that the decedents' deaths occurred on the navigable waters of the United States, and do not deny that the deputy commissioner's evidentiary findings of fact are supported by substantial evidence. Their contention apparently is (Pet. p. 12) that the determination of whether the decedents' employment was local or maritime is one of law rather than one of fact; that as a determination of law, the conclusion of the deputy commissioner in the instant cases is erroneous and not binding on the courts; and that on the facts presented this Court should hold, as a matter of law, that decedents' deaths occurred in local employment and hence are compensable only under State workmen's compensation law. We submit that this question is no longer open, since this Court has already decided, contrary to petitioners' contention, that such a determination, particularly when made in regard to situations in the "twilight zone," is one of fact for the Deputy Commissioner and is binding on the courts if supported by substantial evidence. *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244; cf. *Davis* v. *Department of Labor*, 317 U. S. 249.

1. The *Parker* case involved the very question which petitioners seek to raise here—whether

decedent's "employment was 'so local in character' that [a state] could validly have included it under [its] workmen's compensation Act" (314 U. S. 244, 246). The deputy commissioner there found that although the decedent had been hired primarily as a janitor and porter, at the time of his death he was engaged in maritime employment and hence eligible for an award. This Court sustained the conclusion of the deputy commissioner. That questions as to coverage such as were involved in the *Parker* case are not to be treated as matters of law but are to be determined with due respect for the administrative decision appears from *Davis* v. *Department of Labor,* 317 U. S. 249, where the Court said with respect to issues as to the line of demarcation between the state and federal jurisdiction (pp. 256–257:[1]

> Where there has been a hearing by the federal administrative agency entrusted with broad powers of investigation, fact finding, determination, and award, our task proves easy. There, we are aided by the

[1] In *Crowell* v. *Benson*, 285 U. S. 22, this Court in order to avoid constitutional doubts construed the Longshoremen's Act to permit an independent judicial determination of the existence of an employment relationship deemed to involve constitutional "jurisdictional" facts which bore upon the power of Congress to enact the statute. Since it is clear that Congress may constitutionally provide for all injuries of employees occurring on navigable waters (*Smith & Son* v. *Taylor*, 276 U. S. 179, 181), that case is not opposed to our position here.

provision of the federal act, 33 U. S. C. § 920, which provides that, in proceedings under that act, jurisdiction is to be "presumed, in the absence of substantial evidence to the contrary." Fact findings of the agency, where supported by the evidence, are made final. Their conclusion that a case falls within the federal jurisdiction is therefore entitled to great weight and will be rejected only in cases of apparent error. It was under these circumstances that we sustained the Commissioner's findings in *Parker* v. *Motor Boat Sales, supra.*

The finality thus accorded to the deputy commissioner's findings as to whether the employment is maritime or local is merely an application of the doctrine earlier enunciated in *South Chicago Coal & Dock Co.* v. *Bassett,* 309 U. S. 251, 258,[2] which involved another question of coverage on undisputed primary facts under the Longshoremen's Act. The same principle has been applied by this Court to similar determinations as to

[2] The lower federal courts have on numerous occasions held, upon the authority of the *South Chicago* case, that conclusions of a deputy commissioner as to questions of coverage under Section 3 (a) (1) of the Act are determinations of fact binding upon the courts if sustained by evidence. See, e. g., *Puget Sound Freight Lines* v. *Marshall,* 125 F. (2d) 876 (C. C. A. 9); *Henderson* v. *Jones,* 110 F. (2d) 952 (C. C. A. 5); *Gulf Oil Corp.* v. *McManigal,* 49 F. Supp. 75 (N. D. W. Va.); *Blaske* v. *Bassett,* 35 F. Supp. 315 (E. D. Mo.); cf. *Bowen* v. *Shamrock Towing Co.* (C. C. A. 2), No. 131, October Term, 1943 (decided December 29, 1943).

coverage under other statutes; such matters have been treated as questions of fact submitted to the judgment of the agency charged with its administration. *Shields* v. *Utah Idaho R. Co.*, 305 U. S. 177, 181; *Gray* v. *Powell*, 314 U. S. 402, 412; *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 400; *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, 145.

The test thus is whether the Deputy Commissioner's determination was a rational conclusion supported by substantial evidence. The employment in question was on a movable barge in navigable waters, and involved the loading of a vessel. Cf. *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251. The injury causing death occurred in the course of the employment, and while the employees were proceeding on a vessel to the shore after the completion of work. Cf. *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244. Moreover, decedents ate and slept on navigable waters. The combination of factors here present point more strongly to a conclusion that the employment was maritime than those which this Court has found adequate to sustain a similar conclusion in other cases. Cf. *Parker* v. *Motor Boat Sales, Inc., supra.*

Petitioners contend that decedents' employment must be regarded as local, and in support thereof cite a number of cases. But it is impossible to say, from the facts in this case, that the employ-

ment must be regarded as local as a matter of law, for the preponderance of the factors are more akin to maritime than to local concern. Decedents spent their entire working hours on board a vessel in navigable waters; the only time they set foot on land, so far as the record shows, was when their work was interrupted by a holiday. It is true that decedents' duties related to the loading of sand and gravel which, after being dredged from the waters, was intended for local sale on shore; but the same is true of cargo aboard a vessel being loaded or unloaded by a longshoreman, and this circumstance has never been thought to render the Act inapplicable to such employment.

2. Even conceding, however, that the intended use of the sand and gravel to which decedents' employment related gave their employment a sufficient local concern to support the application of the state compensation law, it does not follow that an award under the federal act is invalid. There are decisions in both federal and state courts which support the Deputy Commissioner's view.[5] Factual situations such as those here involved, containing elements of local as well as of maritime concern, fit within the "shadowy area" susceptible of either state or federal compensation. In *Davis* v. *Department of Labor*, 317

[5] See cases cited in *Davis* v. *Department of Labor*, 317 U. S. 249, 253 n. 2; and in *Motor Boat Sales* v. *Parker*, 116 F. (2d) 789 (C. C. A. 4).

U. S. 249, involving an application for compensation under the state act on account of death of an employee working on a barge, this Court recognized that it "has been unable to give any guiding, definite rule [as to the line of demarcation between state and federal power] in advance of litigation * * *. The determination of particular cases, of which there have been a great many, has become extremely difficult. It is fair to say that a number of cases can be cited both in behalf of and in opposition to recovery here" (p. 253). Accordingly, although this Court apparently felt that the situation before it was properly compensable under the Longshoremen's Act (cf. Chief Justice Stone, dissenting, 317 U. S. at pp. 260, 261), it held the claimant entitled to an award under the state compensation law. This decision was based on a refusal to require claimants "to determine with certainty before bringing their actions that factual question over which courts regularly divide among themselves and within their own membership", for such a requirement would subject the claimant to possible "serious financial loss" and loss of claim through operation of the statute of limitations "in the proper forum while he was erroneously pursuing it elsewhere" (p. 254).

In the instant cases, therefore, the situation would clearly fall within the "twilight zone," requiring affirmance of the conclusion of the

deputy commissioner awarding compensation under the federal law. This conclusion will not press too sharply upon Radcliff, since it has already secured the payment of compensation under the Longshoremen's Act (R. 35) and, hence, is not subject to the penal provisions for failure so to provide. Secs. 38, 32 (33 U. S. C. §§ 938, 932); *Davis* v. *Department of Labor, supra,* at 255.

CONCLUSION

The decision below is correct and does not call for review. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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